Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the	)	
Interstate, Interexchange	)	
Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g)	)	
of the Communications Act	)	
as amended	)	

PETITION FOR CLARIFICATION, FURTHER RECONSIDERATION, AND FORBEARANCE OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President,
Regulatory Policy and Law

CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/785-0081

October 3, 1997

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the	)	
Interstate, Interexchange	)	
Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g)	)	
of the Communications Act	)	
as amended	)	

PETITION FOR CLARIFICATION, FURTHER RECONSIDERATION, AND FORBEARANCE OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")[1/] hereby respectfully requests the Commission to clarify the applicability of the rate integration rule to Commercial Mobile Radio Services ("CMRS").

INTRODUCTION AND SUMMARY

Read literally, the Reconsideration Order in the above-captioned proceeding[2/] could be interpreted to impose burdensome

---

[1/] CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, and includes forty-eight of the fifty largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

[2/] Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the

(continued on next page)

obligations and limitations on CMRS providers that Congress did not intend when it enacted section 254(g) of the Communications Act. The public interest in robust competition strongly favors an interpretation of the rate integration policy that does not extend the policy to a class of carriers that were not subject to the policy prior to its codification in 1996. Even if the rate integration rule applies to CMRS under certain circumstances, the Commission should forbear from applying that rule to CMRS providers.

DISCUSSION

I. SECTION 254(g) IS LARGELY INAPPLICABLE TO CMRS PROVIDERS

Section 254(g) of the Communications Act, added by the Telecommunications Act of 1996, directs the Commission to adopt rules to require rate integration by interstate, interexchange telecommunications service providers. As the legislative history of section 254(g) demonstrates, this provision was only intended to codify existing rate integration and averaging policies, not to expand these requirements to apply to additional services or

---

(continued from previous page)
Communications Act of 1934, as amended, CC Docket No. 96-61, First Memorandum Opinion and Order on Reconsideration, FCC 97-269 at ¶ 18 (rel. July 30, 1997) ("Reconsideration Order").

providers.[3/] CMRS was not subject to rate integration or averaging requirements at the time the Telecommunications Act of 1996 was enacted.

The inapplicability of the rate integration rule to CMRS is underscored by the practical difficulties of applying the rule to wireless carriers. As an initial matter, CMRS service areas do not follow state lines and do not coincide with local exchange carrier ("LEC") "exchanges." Rather, CMRS licenses are issued by MSAs and MTAs, which frequently cover multistate areas. The Commission recently acknowledged the differences between CMRS and LEC exchanges and designated MTAs as the appropriate local calling area for CMRS.[4/] Because intra-MTA calls are thus not "interexchange" calls, section 254(g) does not apply.

Even with regard to inter-MTA calls, there is frequently no toll charge. Wide-area local calling plans, which often include

---

[3/] See H.R. Conf. Rep. No. 104-458, at 132 ("Conference Report") ("The conferees intend the Commission's rules to require geographic rate averaging and rate integration, and to incorporate the policies contained in the Commission's proceeding entitled 'Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska and Puerto Rico/Virgin Islands' (61 FCC 2d 380 (1976).").

[4/] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 at ¶ 1036 (1996) ("Local Competition Order").

the entire MSA or MTA, permit calls between locations in different States without a separate toll charge. Indeed, some wireless carriers have combined portions of multiple MTAs into single "local" calling areas for billing purposes. Calls within these extended local areas fall outside the reach of section 254(g) because they are not "interexchange."

The innovative rate plans devised by wireless carriers and the mobility inherent in CMRS also create considerable difficulty in identifying "interstate" calls for purposes of section 254(g). For instance, a mobile customer might initiate a call in one State but conclude the call after traveling to an adjacent State. Whether that call was interstate or intrastate would depend on an arbitrary determination of which State was denominated as the originating site for the call. In the case of metropolitan areas covering several States (such as Washington, D.C. or New York), a mobile caller might travel among three States or out of and back into one particular State during a single call, further complicating the question of where the call originated for purposes of section 254(g).

Similarly, a CMRS customer who lives in Northern Virginia may have a local calling plan that covers the entire Washington-Baltimore metropolitan area. If the customer were to call to or from Baltimore, Maryland, the call would be rated as a "local"

call even though it is an interstate call. Conversely, if this same customer were to call to or from Richmond, Virginia, the call would be a "toll" call, even though it is not an interstate call. In the case of calls made by roamers,[5/] there is an additional problem of determining whether the charges would have to be integrated with the rates of the roamed-upon system or those of the home system.

Other CMRS providers offer local and long distance services at a single undifferentiated charge, so that a CMRS customer pays the same rate to call within his MTA as he does to call someone on the opposite coast. CTIA understands that still other carriers have begun offering service for a flat monthly rate that is geographically insensitive. In both of these cases, a CMRS customer in California pays the same rate whether he is calling to the same town or to New York or Hawaii. On its face, section 254(g) presumes that interstate service is being provided at a separately-identifiable "interstate" rate. Any attempt to apply

---

[5/] "Roaming" occurs where the subscriber of one CMRS provider uses the facilities of another CMRS provider with which the subscriber has no direct or pre-existing relationship in order to place and receive calls while the subscriber is in the service area of the "roamed upon" carrier. In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 at ¶ 3 (1996).

the rate integration requirement to situations where there is no such rate would deprive consumers of the benefits of these innovative rate plans.

Literal compliance with the Reconsideration Order would also require CMRS providers to act in ways that are inconsistent with prior Congressional and Commission directives. For example, because of the complex ownership structures of many CMRS providers, application of the affiliate definition adopted in the Reconsideration Order would yield blatantly anticompetitive results. Requiring CMRS providers to integrate rates across affiliates may require separate and competing carriers that are partners in one market to coordinate and charge the same CMRS interstate, interexchange rates in other markets where they operate as competitors.[6/] In the latter markets, a carrier could effectively be precluded from reducing its interstate rates to attract subscribers unless the other carrier also did so. Such an outcome does not serve the public interest in a competitive marketplace, and it was surely not the intent of Congress in

---

[6/] For example, PrimeCo is owned by two partnerships. One partnership is in turn owned by AirTouch and US WEST, while the other is owned by Bell Atlantic. Likewise, AT&T Wireless and AirTouch jointly own several cellular systems through CMT Partners, while BellSouth and AT&T Wireless jointly own the Los Angeles Cellular Telephone Co. and the Houston Cellular Telephone Co.

enacting section 254(g) to repeal the antitrust laws' proscription on price fixing.

Likewise, CMRS carriers have traditionally priced local and toll services flexibly, a practice that was recognized by Congress in 1993[7/] and endorsed by the Commission in its decision to forbear from tariffing CRMS.[8/] Application of rate integration requirements to CMRS would prevent CMRS providers from continuing to respond to competitive pressures by reducing interstate rates in particular markets.

Finally, even where interstate CMRS offerings have separate toll and airtime charges, the airtime charges often vary from market to market.[9/] Under these circumstances, even requiring integration of interstate toll rates would not result in the same

---

[7/] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(b)(2), 107 Stat. 312 (1993) (codified at 47 U.S.C. § 332(c)(3)(A)) (preempting state regulation of CMRS rates).

[8/] Implementation of Section (3)(n) and 332 of the Communications Act, Second Report and Order, 9 FCC Rcd 1411, 1511 (1994) ("CMRS Second Report and Order").

[9/] Airtime charges are not like access charges, which are external costs imposed on landline carriers. Airtime charges are assessed by CMRS providers on customers. Rate regulation of CMRS airtime charges is beyond the scope of section 254(g).

total rate being charged in each State, defeating the very purpose behind section 254(g).[10/]

There is nothing in the statutory language of section 254(g) or the legislative history to suggest that Congress intended to deprive CMRS customers of the benefits of flexible pricing and competition in the wireless marketplace, or to force the wholesale reregulation or restructuring of CMRS rates. In order to avoid these unintended results, the Commission should reconsider its decision to apply the rate integration rule to CMRS.[11/]

II. THE COMMISSION SHOULD FORBEAR FROM APPLYING SECTION 254(g) TO CMRS PROVIDERS

The public interest in robust competition among CMRS providers and between those providers and other telecommunications carriers strongly favors an interpretation of

---

[10/] See 47 U.S.C. § 254(g) (directing the Commission to require providers of interstate, interexchange telecommunications services to provide such services "to subscribers in each State at rates no higher than the rates charged to its subscribers in any other state").

[11/] CTIA does not seek reconsideration of the Commission's decision to apply the rate integration rule to AMSC. Although AMSC provides mobile service, it functions more as an interstate carrier than as a local telecommunications carrier that may also offer interstate service to its subscribers as other CMRS providers do.

the rate integration policy that does not extend the policy to a class of carriers that were not subject to the policy prior to its codification in 1996. As demonstrated above, such an interpretation is consistent with a reasonable reading of section 254(g) and Congressional intent as reflected in the legislative history of that provision.

If the Commission nevertheless finds that certain aspects of section 254(g) apply to CMRS providers, it should forbear from enforcing the rule as applied to CMRS providers.[12/] Congress expressly recognized the Commission's authority to grant "limited exceptions" to section 254(g) under new section 10 of the Communications Act.[13/] CTIA's request meets the statutory requirements of the Act for regulatory forbearance. First, rate integration is not necessary to ensure that CMRS rates and

---

[12/] See 47 U.S.C. § 160. To the extent that the Commission does not forbear from applying the rate integration rule to CMRS providers, carriers should not be required to integrate interstate interexchange CMRS services with any other interstate interexchange service offerings. See Reconsideration Order at ¶ 18.

[13/] Conference Report at 132. The Commission has already determined to forbear from applying section 254(g)'s rate averaging requirement to contract tariffs and Tariff 12 options. Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 9564, 9575-9579 (1996).

policies are just, reasonable, and not unreasonably discriminatory. As the Commission has repeatedly recognized, there is vigorous competition in the CMRS industry today.[14/] This is true even in Alaska and Hawaii,[15/] notwithstanding the historical need for regulation to ensure integrated rates for conventional interstate services. With multiple CMRS providers licensed in each market - and multiple interstate carriers competing to provide long distance service to CMRS customers -- if any one CMRS provider attempted to charge unjust or

---

[14/] See, e.g., Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates, Report and Order, 10 FCC Rcd 7486 at ¶ 97 (1995) (denying California's petition for authority to regulate CMRS rates because of the competitive wireless market structure). See also Implementation of Section 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411 at ¶ 138 (1994) ("CMRS Second Report and Order") (deciding to forbear from applying certain Title II regulations to CMRS providers because of sufficient level of competition in the industry).

[15/] There are at least six CMRS providers actively providing service in Hawaii, including Honolulu Cellular, GTE Wireless, VoiceStream, PrimeCo Personal Communications, Ameritech Cellular, and AT&T Wireless. There are also multiple carriers in Alaska, including MACtel Cellular, AT&T Wireless, MUS Cellular One, Arctic Slope Telecommunications Cellular, Cellulink/Pacific Telecommunications Cellular, Bristol Bay Cellular Partnership, Cellular Connection, Copper Valley Cellular, and RJL Cellular Partnership. Two additional PCS licensees plan to offer service in the future.

unreasonable rates for interstate, interexchange CMRS service, customers could easily switch to another provider. CMRS providers simply lack the market power necessary to maintain interstate, interexchange rates above competitive levels.

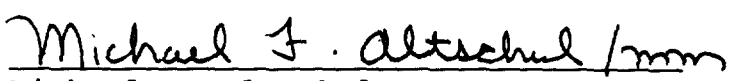
Second, this same vigorous competition ensures that enforcement of the rate integration rule is not necessary to protect consumers. CMRS providers have historically had the freedom to price interstate services without regard to the Commission's rate integration policies, with no harm to consumers. To the contrary, consumers have benefited from discounted interstate rates offered by CMRS providers as inducements to subscribe.

Finally, a decision not to require CMRS providers to integrate their rates would be in the public interest. Imposing rate integration requirements on CMRS providers would limit their ability to price their services competitively and offer innovative rate plans. Abstaining from applying these requirements to CMRS providers will enable CMRS providers to continue to offer wide area calling and other flexibly-priced service offerings, enhancing the attractiveness of CMRS as a substitute for conventional landline local and long distance services.

CONCLUSION

Because of the inherent differences between mobile and conventional telecommunications services, Congress created a separate regulatory regime for CMRS in 1993. Nothing in section 254(g) suggests that Congress intended for CMRS providers to undertake the substantial efforts that would be required to conform their offerings to those of conventional interstate carriers, or that Congress wished to deprive consumers of the pricing flexibility and marketplace responsiveness they have come to expect from wireless carriers. In light of the substantial evidence that rate integration cannot and should not apply to CMRS, the Commission should reconsider that portion of its Reconsideration Order addressing CMRS.

Respectfully submitted,



Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President,
Regulatory Policy and Law

CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/785-0081

October 3, 1997

CERTIFICATE OF SERVICE

I, Michelle Mundt, hereby certify that on the 3rd day of October 1997, I caused copies of the foregoing "Petition for Reconsideration" to be sent to the following by either first class mail, postage pre-paid, or by hand delivery (*) to the following:

A. Richard Metzger, Jr.*
Acting Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Patrick J. Donovan*
Deputy Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
2033 M Street, N.W., Room 500
Washington, D.C. 20554

Dan Phythyon*
Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Rosalind K. Allen*
Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Jeanine Poltronieri*
Associate Chief
Wireless Telecommunications Bureau
Federal Communications Commission
Room 5002
2025 M Street, N.W.
Washington, D.C. 20554

James D. Schlichting*
Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

William Bailey*
Attorney Advisor
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

John B. Muleta*
Chief, Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W., Room 6008
Washington, D.C. 20554

Wanda Harris*
Common Carrier Bureau
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

ITS*
1231 20th Street, N.W.
Washington, D.C. 20554

Kathleen Q. Abernathy
AirTouch Communications
1818 N Street, N.W.
8th Floor
Washington, D.C. 20036

Jonathan M. Chambers
Sprint Spectrum, L.P.
1801 K Street, N.W.
Suite M112
Washington, D.C. 20006

John T. Scott, III
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595

Cathleen A. Massey
Vice President - External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Herbert E. Marks
James M. Fink
Squire, Sanders & Dempsey, L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044

Thomas K. Crowe
Michael B. Adams, Jr.
Counsel for the Commonwealth of the
Northern Mariana Islands
Law Offices of Thomas K. Crowe, P.C.
2300 M Street, N.W.
Suite 800
Washington, D.C. 20037

Luisa L. Lancetti
Wilkinson Barker Knauer & Quinn
1735 New York Avenue, N.W.
Suite 600
Washington, D.C. 20006-5289

David G. Frolio
BellSouth Corporation
1133 21st Street, N.W.
Suite 900
Washington, D.C. 20036

William L. Roughton, Jr.
Associate General Counsel
PrimeCo Personal Communications, LP
1133 20th Street, N.W.
Suite 850
Washington, D.C. 20036

Roger C. Sherman
Wiley Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

John W. Katz
Special Counsel to the Governor
Director, State-Federal Relations
Office of the State of Alaska
Suite 336
444 North Capitol Street, N.W.
Washington, D.C. 20001

William B. Barfield
Jim Q. Llewellyn
BellSouth Corporation
1155 Peachtree Street, N.W.
Suite 1800
Atlanta, GA 30309-2641

Laurie J. Bennett
Robert B. McKenna
Jeffry A. Brueggeman
Counsel for U S West, Inc.
1020 19th Street, N.W.
Suite 700
Washington, D.C. 20036

Mark J. Golden
Angela E. Giancarlo
Personal Communications Industry
Association
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561

Carol L. Tacker
Vice President & General Counsel
Southwestern Bell Mobile Systems, Inc.
17330 Preston Road
Suite 100A
Dallas, Texas 75252

Daniel E. Troy
Angela N. Watkins
Wiley, Rein & Fielding
Counsel for GTE Service Corporation
1776 K Street, N.W.
Washington, D.C. 20006

Mark J. O'Connor
Piper & Marbury L.L. P.
Counsel for Omnipoint Communications Inc.
1200 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036

Leonard J. Kennedy
Laura H. Phillips
Christopher D. Libertelli
Counsel for Comcast Cellular
Communications, Inc.
Dow, Lohnes & Albertson, PLC
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Ward W. Wueste
Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

George Y. Wheeler, Esq.
Koteen & Naftalin, L.L.P.
Telephone and Data Systems, Inc.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Michelle M. Mundt

Michelle Mundt

DCDOCS: 116243.1 (2h_z01!.doc)